IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 432 of 2005

Between:

Edde. P. Rajeshwari, W/o. Raghupathi,
H/o. Muddunur (Village), Duggondi Mandal, Warangal District.

..... PETITIONER

AND

1 The Joint Collector, Warangal, Warangal District.
2 The Revenue Divisional Officer, Narasampet, Warangal.
3 The Mandal Revenue Officer, Duggondi, Warangal District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the order dt. 30.12.2004 in Appeal No.34 of 2004 passed by the 1st respondent and also the order dt. 25.11.2004 in procgs. No.E/1518/2004 passed by the 2nd respondent whereby suspending the authorisation of the petitioner, and to pass such other order or orders in the circumstances of the case.

Counsel for the Petitioner:MR.A.PRABHAKAR RAO

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the stage of admission made the following ORDER:

Petitioner is functioning as a fair price shop dealer of Guddelugulapally village, H/o Muddunur, Duggondi mandal, Warangal district. The second respondent suspended her authorization through proceedings dated 25.11.2004. The basis for her suspension is that the Mandal revenue Officer, Duggondi mandal, the third respondent, had reported that the petitioner committed certain irregularities in the distribution of kerosene for the month of October 2004.

The petitioner preferred an appeal, together with an application for stay, before the first respondent. Through an order dated 30.12.2004, the first respondent took the appeal on file and directed the second respondent to finalize the case within two weeks. He did not indicate as to whether any interim order is passed or not. The petitioner feels aggrieved by the same.

Learned counsel for the petitioner submits that the second respondent proceeded as though the petitioner committed irregularities, without even issuing any show cause notice or ascertaining the facts from the petitioner. He contends that the suspension ordered by the second respondent is not as a measure pending enquiry and a reading of the order discloses that except directing an enquiry by the third respondent, the second respondent did not even contemplate issuance of a show cause notice to the petitioner. Learned

counsel also submits that the first respondent did not apply his mind to the facts of the case and the order dated 30.12.2004 does not conform to either an order disposing of an application for stay, or an appeal.

Learned Government Pleader for Civil Supplies, on the other hand, submits that though it is not specifically indicated in the order of suspension that it is pending enquiry, from the purport of it, it is to be treated as the one, pending enquiry. It is contended that the first respondent had impliedly refused to grant stay and further directed the second respondent to expedite the disposal of the proceedings.

The petitioner availed the remedy of appeal provided for under Clause 20 of the A.P. State Public Distribution System Control Order, 2001 (for short 'the Control Order) before the first respondent, aggrieved by the order dated 25.11.2004 passed by the second respondent. The first respondent is also empowered to pass interim orders in the appeals filed before him. After receipt of the appeal preferred by the petitioner, the first respondent passed an order, which reads as under:

> "The appeal petition filed by Smt. Eddy Rajeshwari, Ex. F.P.S. dealer, Guddelugulapally (v) of Duggondi (m) U/Cl. 20 of the A.P. State P.D.S. Control Order, 2001 against the suspension of dealership order issued by the Revenue Divisional Officer, Narsampet vide reference 1st cited has been examined, taken on file and direct the Revenue Divisional Officer, Narsampet to finalize the case within (2) weeks from the date of receipt of this order and pass orders accordingly."

From a reading of the same, it is not clear as to whether the first respondent has disposed of the appeal or the application for stay or has only taken a step, other than those two. The fact that the appeal is taken on file discloses that it is pending before him. However, a direction to the second respondent for disposal of the matter within two weeks could have been given only while disposing of the appeal. Not a word is said about the application filed by the petitioner for grant of stay. The petitioner or for that matter this Court is at a loss to understand as to the purport of the order dated 30.12.2004. Much is expected

from an officer of Indian Administrative Service, in such matters. It is on account of the uncertainty resulting out of the order dated 30.12.2004 passed by the first respondent that a necessity arises for this Court to deal with the order dated 25.11.2004 passed by the second respondent.

A perusal of the order of suspension passed by the second respondent discloses that the suspension was not ordered as a measure pending enquiry. Hence, it needs to be treated as a substantive penalty. Suspension, as a penalty can be imposed under Clause 5(4) of the Control Order only after issuing a show cause notice and conducting enquiry.

Another facet of the order passed by the second respondent is that he appointed the Deputy Tahasildar (Civil Supplies) as an enquiry officer for conducting the enquiry and submit a report within one month. Not a word is said about the issuance of any notice to the petitioner. Under the Control Order, the second respondent is the appointing authority and it is for him to conduct an enquiry and to pass any orders against the dealer. The officer, who passed the order, does not appear to be having even a basic idea or comprehension about the scheme under the Control Order.

One more crucial aspect is that even before ascertaining the facts from the petitioner, much less issuing a show cause notice to her, the second respondent recorded a finding to the following effect:

> "Hence it is clearly established that the F.P. shop dealer has committed the irregularities in distribution of kerosene oil to the card holders and diverted the kerosene in to block market."

On the face of it, this finding is contrary to law and violative of principles of natural justice. Any further discussion on the matter is likely to have its impact on the proceedings that are required to be initiated. Since the order dated 25.11.2004 passed by the second respondent, *prima facie,* suffers from certain basic infirmities, it deserves to be stayed pending disposal of the appeal by the first respondent.

Hence, the writ petition is allowed and it is directed that the order dated

25.11.2004 passed by the second respondent shall remain stayed pending disposal of the appeal by the first respondent. There shall be no order as to costs.

20.01.2005

Note:

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To

1 One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy (for His Lordships kind perusal)

2 The Joint Collector, Warangal, Warangal District.
2 The Revenue Divisional Officer, Narasampet, Warangal.
3 The Mandal Revenue Officer, Duggondi, Warangal District.

4 Two C.Cs. to the Government Pleader for Civil Supplies, High Court

of A.P., Hyderabad (OUT).

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